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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 50

SAN DIEGO BUILDING TRADES COUNCIL, MILLMEN'S UNION, LOCAL 2020, BUILDING MATERIAL AND DUMP DRIVERS, LOCAL 36,
Petitioners,

vs.

J. S. GARMON, J. M. GARMON AND W. A. GARMON,
Respondents.

On Writ of Certiorari to the Supreme Court of California

MOTION TO TAX COSTS AND DISALLOW THE COST OF PRINTING UNNECESSARY PARTS OF RECORD

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J. S. GARMON, J. M. GARMON and W. A. GARMON, respondents in the above entitled cause, move this Court for an order taxing costs in the above entitled case and directing that the cost of including in the printed record the Reporter's Transcript of the oral proceedings in the trial court (constituting 253 pages of the printed record) be disallowed as costs in this Court pursuant to Paragraph 7 of Rule 36 of this Court on the ground that the said Reporter's Transcript was an unnecessary part of

the record to be printed and that the petitioners have nevertheless caused the same to be printed. The said motion is based upon the following facts:

1. Petitioners through their counsel John B. Stevenson by Petitioners' Designation of Portions of the Record to be Printed, dated May 25, 1956, designated all the record in this case to be printed except for certain items which do not include the Reporter's Transcript of the proceedings in the trial court;

2. The questions presented to this Court as specified in both the petition for certiorari and the brief of petitioners relate solely to the jurisdiction of the state court to proceed and are specifically stated to be questions posed by the conclusions of the Supreme Court of California, all of which questions turn solely upon the opinion of the Supreme Court of California, and possibly upon the pleadings, Findings of Fact and Conclusions of Law, and Judgment of the trial court, and not upon facts appearing only in the oral proceedings in the trial court.

3. The statements of facts in the opinion of the Supreme Court of California and in the Findings of Fact and Conclusions of Law were not challenged in any way, either as containing facts that were not shown by the evidence or as omitting material facts shown by the evidence.

4. The greater part of the said Reporter's Transcript consists of evidence as to the acts of the defendants held by state courts to be illegal, and the damages resulting therefrom, all of which is covered by the Findings of Fact and Conclusions of Law and by the opinion of the Supreme Court of California and the evidence thereon was completely immaterial to any issue presented to this Court. A small portion of the said Reporter's Transcript containing the testimony of Ward W. Waddell, Jr. and consisting of twelve pages (pages 191 to 202) of the printed record, related to the proceedings before the National Labor

Relations Board, all of which, so far as material, was likewise completely covered by the Findings of Fact and Conclusions of Law and the opinion of the Supreme Court of California. A portion, consisting of twelve pages, (pages 310 to 321) of the printed record consists of the oral opinion of the trial judge and related matters, and a portion, consisting of fifteen printed pages (pages 67 to 81) consists of the opening statement of counsel and related matters, all of which is completely immaterial to any issue presented to this Court.

5. The oral testimony appearing in said transcript was not in fact referred to in the appellants' brief except that on page 4 and elsewhere in the said brief the said testimony was cited for the proposition that the petition to the National Labor Relations Board was maile on the same day that the proceeding in the court below was filed, a fact which is not material to the issues in this Court, and except that on page 5 and elsewhere in the said brief there is a reference to a point at which one of the attorneys for the plaintiffs testified as to a doubt whether an unfair labor practice charge was being committed, also a fact immaterial to the issues presented to this Court.

6. No other reference to any other portion of the Reporter's Transcript appears in the petitioners' brief except certain quotations from the opinion of the trial court, which was not necessary to the decision of the questions presented to this Court.

7. The Reporter's Transcript was not referred to by respondents in their brief except for certain background material relating to the identity of the parties, and as an additional citation for certain material for which other portions of the record were also cited (Respondents' Brief, pp. 4, 5, and 6).

8. No facts appearing from the said Reporter's Transcript and not appearing in the opinion of the Supreme Court of California or in the Findings of Fact and Conclusions of Law were relied

upon by any party or any amicus curiae as the basis for any argument of law presented to this Court, either in the briefs or in oral argument.

9. It is unjust and unnecessarily burdensome to require the respondents to pay for the printing of hundreds of pages of oral testimony and proceedings in the trial court when the issues presented were issues of law depending upon facts sufficiently appearing from the opinion of the Supreme Court of California and the pleadings, Findings of Fact and Conclusions of Law, and Judgment.

All of the said facts appear from the records of this Court.

Dated: May 17, 1957.

JAMES W. ARCHER
J. STERLING HUTCHESON
Counsel for Respondents.

WARD W. WADDELL, JR.
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